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## BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

Arizona Corporation Commission

**DOCKETED**

APR -8 2010

DOCKETED BY

nr

In the matter of

JOHN W. PACHECO and ANGELA  
PACHECO, husband and wife;

BILL L. WALTERS and JACQUELYN  
WALTERS, husband and wife;

FINANCIAL AMERICAN  
CORPORATION, a Nevada corporation;

THE FINANCIAL AMERICAN GROUP,  
LLC, a Delaware limited liability company;

AMERICAN APARTMENT FUND XI, LP,  
a Delaware limited partnership;

Respondents.

DOCKET NO. S-20688A-09-0326

DECISION NO. **71598**

**ORDER TO CEASE AND DESIST, FOR  
RESTITUTION, AND FOR  
ADMINISTRATIVE PENALTIES AND  
CONSENT TO SAME BY:**

**JOHN W. PACHECO and ANGELA  
PACHECO**

**FINANCIAL AMERICAN CORPORATION****THE FINANCIAL AMERICAN GROUP, LLC****AMERICAN APARTMENT FUND XI, LP**

Respondents JOHN W. PACHECO ("PACHECO"), ANGELA PACHECO, FINANCIAL AMERICAN CORPORATION ("FAC"), THE FINANCIAL AMERICAN GROUP, LLC ("TFAG"), and AMERICAN APARTMENT FUND XI, LP ("AAF"), elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order to Cease and Desist, for Restitution, and for Administrative Penalties ("Order"). Respondents PACHECO, ANGELA PACHECO, FAC, TFAG, and AAF admit the jurisdiction of the Arizona Corporation Commission ("Commission"). Respondents PACHECO, ANGELA PACHECO, FAC, TFAG, and AAF consent to entry of the Order without admitting or denying any of the Findings of Fact and Conclusions of Law contained in the Order, without trial of any issue of fact or law pertaining to

1 this Order and provided that no Findings of Fact or Conclusions of Law contained in the Order  
2 shall be attributed to, effective against or binding upon Respondents PACHECO, ANGELA  
3 PACHECO, FAC, TFAG, and AAF for any purpose other than in this case or any other proceeding  
4 before the Commission involving any of them. Nothing herein shall have any collateral estoppel or  
5 res judicata effect against the Respondents PACHECO, ANGELA PACHECO, FAC, TFAG, and  
6 AAF for any purpose except for any proceeding before the Commission involving any of them.  
7 Respondents PACHECO, ANGELA PACHECO, FAC, TFAG, and AAF consent to the entry of  
8 this Order by the Commission.

9 **I.**

10 **FINDINGS OF FACT**

11 1. JOHN W. PACHECO is an individual who, at all relevant times, resided in Maricopa  
12 County, Arizona. PACHECO is the CEO, chairman of the board, and sole director of FINANCIAL  
13 AMERICAN CORPORATION.

14 2. FINANCIAL AMERICAN CORPORATION is a Nevada corporation doing  
15 business in Arizona. FAC is both the managing member of THE FINANCIAL AMERICAN  
16 GROUP, LLC, and the manager of AMERICAN APARTMENT MANAGEMENT COMPANY,  
17 LLC ("AAMC").

18 3. THE FINANCIAL AMERICAN GROUP, LLC is a Delaware limited liability  
19 company doing business in Arizona.

20 4. AMERICAN APARTMENT FUND XI, LP is a Delaware limited partnership doing  
21 business in Arizona. AAMC is the general partner of AAF.

22 5. PACHECO, TFAG, and AAF may be referred to collectively as "Respondents."

23 6. ANGELA PACHECO was, at all relevant times, the spouse of PACHECO.  
24 ANGELA PACHECO is joined in this action under A.R.S. § 44-2031(C) solely for purposes of  
25 determining the liability of the marital community and may be referred to as "Respondent Spouse."  
26

1           7.       At all relevant times, PACHECO acted for his own benefit and for the benefit or in  
2 furtherance of his and Respondent Spouse's marital community.

3           8.       At all relevant times, Respondents were not registered as securities dealers or  
4 salesmen.

5           9.       From on or about October 2004 to November 2007 in Maricopa County, Arizona,  
6 Respondents offered at least seven individuals/entities ("the Investors") investments in which  
7 Respondents would purchase and resell certain real estate. With each of the Investors, Respondents  
8 entered into a Deal Point Memorandum identifying the particular real estate that is the subject of the  
9 investment.

10          10.      *The Deal Point Memoranda state, among other things, that Respondents will pay the*  
11 *Investors the greater of 50 or 100 percent of their investment or 5 to 10 percent of the net profits on*  
12 *selling the real estate.*

13          11.      Respondents represented that they, not the Investors, would solicit opportunities to  
14 purchase real estate, find buyers to attempt to resell it to for a profit, purchase the real estate in the  
15 name of one or more Respondents, and then manage all aspects of the resale of the real estate.

16          12.      Respondents located land and apartment buildings to purchase, entered into contracts,  
17 opened escrows, and deposited earnest money; however, escrows did not close.

18          13.      Pursuant to terms set forth in the Deal Point Memoranda, the Respondents pooled  
19 together a total of \$4,250,000 from Investors, and deposited the investment funds into general  
20 operating accounts of TFAG and AAF.

21          14.      Respondents did not disclose to the Investors that their investment funds would be  
22 commingled into general operating accounts of TFAG and AAF and could be used to pay expenses  
23 unrelated to the Investors' investments.

24          15.      Respondents have repaid to the Investors amounts totaling \$2,400,000.

25          16.      At all relevant times, the investments referred to above were not registered pursuant to  
26 Articles 6 or 7 of the Securities Act.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. Respondents offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. Respondents violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. Respondents violated A.R.S. § 44-1842 by offering or selling securities while neither registered as dealers or salesmen nor exempt from registration.

5. Respondents violated A.R.S. § 44-1991 by making untrue statements or misleading omissions of material facts. Respondents' conduct includes, but is not limited to, failing to disclose to the Investors that their investment funds would be commingled into the general operating accounts of TFAG and AAF and could be used to pay expenses unrelated to the Investors' investments.

6. FAC directly or indirectly controlled TFAG as its managing member and it directly or indirectly controlled AAF as the manager of its general partner AAMC. Therefore, FAC is jointly and severally liable under A.R.S. § 44-1999 to the same extent as TFAG and AAF for their violations of A.R.S. § 44-1991.

7. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

8. Respondents' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

9. Respondents' conduct is grounds for administrative penalties under A.R.S. § 44-2036.

10. PACHECO acted for the benefit of his and Respondent Spouse's marital community and, pursuant to A.R.S. §§ 25-214 and 25-215, this Order of restitution and administrative penalties is a debt of the community.

### III.

## ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and the consent of Respondents, FAC, and Respondent Spouse to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondents, FAC, and any of their agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED that Respondents, FAC, and Respondent Spouse comply with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondents individually, FAC, and the marital community of PACHECO and Respondent Spouse, jointly and severally with any other Respondent against whom the Commission enters an order under Docket No. S-20688A-09-0326, shall pay restitution to the Commission in the principal amount of \$1,850,000. Any principal amount outstanding shall accrue interest at the rate of 10 percent per annum from the date of purchase until paid in full. Interest in the amount of \$561,692 has accrued from the date of purchase to the date of this Order. *Payment shall be made in full on the date of this Order.* Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission.

The Commission shall disburse the funds on a *pro-rata* basis to investors shown on the records of the Commission. Any restitution funds that the Commission cannot disburse because an investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an

1 investor because the investor is deceased and the Commission cannot reasonably identify and  
2 locate the deceased investor's spouse or natural children surviving at the time of the distribution,  
3 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the  
4 Commission. Any funds that the Commission determines it is unable to or cannot feasibly  
5 disburse shall be transferred to the general fund of the state of Arizona.

6 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents  
7 individually, FAC, and the marital community of PACHECO and Respondent Spouse, jointly and  
8 severally, shall pay an administrative penalty in the amount of \$125,000. Payment shall be made  
9 to the "State of Arizona." Any amount outstanding shall accrue interest as allowed by law. The  
10 payment obligations for these administrative penalties shall be subordinate to any restitution  
11 obligations ordered herein and shall become immediately due and payable only after restitution  
12 payments have been paid in full or upon the default of Respondents, FAC, or Respondent Spouse  
13 with respect to the restitution obligations of Respondents, FAC, and Respondent Spouse.

14 For purposes of this Order, a bankruptcy filing by any of the Respondents, FAC, or  
15 Respondent Spouse shall be an act of default. If any Respondent, FAC, or Respondent Spouse  
16 does not comply with this Order, any outstanding balance may be deemed in default and shall be  
17 immediately due and payable as to that respondent.

18 IT IS FURTHER ORDERED that, if any Respondent, FAC, or Respondent Spouse fails to  
19 comply with this order, the Commission may bring further legal proceedings against that  
20 Respondent, FAC, or Respondent Spouse, including application to the superior court for an order  
21 of contempt.

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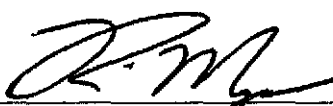


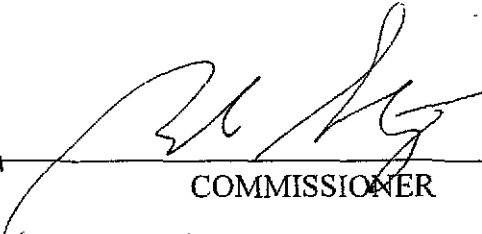
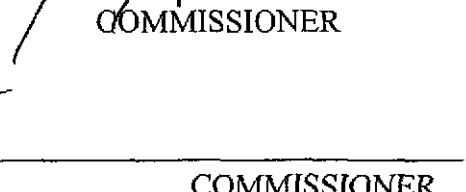
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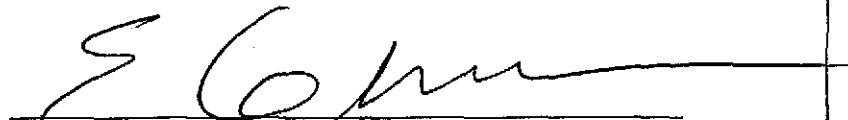
IT IS FURTHER ORDERED that no finding of fact or conclusion of law contained in this Order shall be deemed binding against any Respondent under this Docket Number who has not consented to the entry of this Order.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

		
CHAIRMAN	COMMISSIONER	
		
COMMISSIONER	COMMISSIONER	COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 7<sup>th</sup> day of April, 2010.

  
 ERNEST G. JOHNSON  
 EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).

(JC)

**CONSENT TO ENTRY OF ORDER**

1  
2       1.       Respondents, FAC, and Respondent Spouse admit the jurisdiction of the  
3 Commission over the subject matter of this proceeding. Respondents, FAC, and Respondent  
4 Spouse acknowledge that they have been fully advised of their right to a hearing to present  
5 evidence and call witnesses and they knowingly and voluntarily waive any and all rights to a  
6 hearing before the Commission and all other rights otherwise available under Article 11 of the  
7 Securities Act and Title 14 of the Arizona Administrative Code. Respondents, FAC, and  
8 Respondent Spouse acknowledge that this Order to Cease and Desist, for Restitution, and for  
9 Administrative Penalties ("Order") constitutes a valid final order of the Commission.

10       2.       Respondents, FAC, and Respondent Spouse knowingly and voluntarily waive any  
11 right under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal,  
12 or extraordinary relief resulting from the entry of this Order.

13       3.       Respondents, FAC, and Respondent Spouse acknowledge and agree that this Order  
14 is entered into freely and voluntarily and that no promise was made or coercion used to induce  
15 such entry.

16       4.       Respondents, FAC, and Respondent Spouse acknowledge that they have been  
17 represented by an attorney in this matter; that they have reviewed this Order with their attorney  
18 Brian J. Schulman (Greenberg Traurig, LLP); and that they understand all of the terms it contains.  
19 Respondents, FAC, and Respondent Spouse acknowledge that their attorney has apprised them of  
20 their rights regarding any conflicts of interest arising from dual representation. Respondents, FAC,  
21 and Respondent Spouse acknowledge that they have each given their informed consent to such  
22 representation.

23       5.       Respondents, FAC, and Respondent Spouse consent to entry of the Order without  
24 admitting or denying any of the Findings of Fact and Conclusions of Law contained in the Order,  
25 without trial of any issue of fact or law pertaining to this Order and provided that no Findings of  
26 Fact or Conclusions of Law contained in the Order shall be attributed to, effective against or



1 binding upon Respondents, FAC, and/or Respondent Spouse for any purpose other than in this  
2 case or any other proceeding before the Commission involving Respondents, FAC, and/or  
3 Respondent Spouse. Nothing herein shall have any collateral estoppel or res judicata effect against  
4 the Respondents, FAC, and/or Respondent Spouse for any purpose except for any proceeding  
5 before the Commission involving Respondents, FAC, and/or Respondent Spouse.

6       6. Subject to the provisions of paragraph 5 under this Consent to Entry of Order, by  
7 consenting to the entry of the Order, Respondents, FAC, and Respondent Spouse agree not to take  
8 any action or to make, or permit to be made, any public statement denying, directly or indirectly,  
9 any Finding of Fact or Conclusion of Law in this Order or creating the impression that this Order  
10 is without factual basis. Notwithstanding the foregoing, the Order is not intended to collaterally  
11 estop or preclude the Respondents, FAC, and Respondent Spouse from defending themselves in  
12 any civil proceeding to which the Commission is not a party or any criminal proceeding.  
13 Respondents, FAC, and Respondent Spouse will undertake steps necessary to assure that all of  
14 their agents and employees understand and comply with this agreement.

15       7. While this Order settles this administrative matter between Respondents, FAC,  
16 Respondent Spouse, and the Commission, it is understood by Respondents, FAC, and Respondent  
17 Spouse that this Order does not preclude the Commission from instituting other administrative or  
18 civil proceedings based on violations that are not addressed by this Order.

19       8. Respondents, FAC, and Respondent Spouse understand that this Order does not  
20 preclude the Commission from referring this matter to any governmental agency for  
21 administrative, civil, or criminal proceedings that may be related to the matters addressed by this  
22 Order.

23       9. Respondents, FAC, and Respondent Spouse understand that this Order does not  
24 preclude any other agency or officer of the state of Arizona or its subdivisions from instituting  
25 administrative, civil, or criminal proceedings that may be related to matters addressed by this  
26 Order.

1           10. Respondents and FAC agree that they will not apply to the state of Arizona for  
2 registration as a securities dealer or salesman or for licensure as an investment adviser or  
3 investment adviser representative until such time as all restitution and penalties under this Order  
4 are paid in full.

5           11. Respondents and FAC agree that they will not sell any securities in or from Arizona  
6 without being properly registered in Arizona as a dealer or salesman, or exempt from such  
7 registration; Respondents and FAC will not sell any securities in or from Arizona unless the  
8 securities are registered in Arizona or exempt from registration; and Respondents and FAC will  
9 not transact business in Arizona as an investment adviser or an investment adviser representative  
10 unless properly licensed in Arizona or exempt from licensure.

11           12. Respondents, FAC, and Respondent Spouse agree that they will continue to  
12 cooperate with the Securities Division by, including but not limited to, providing complete and  
13 accurate testimony at any hearing in this matter and cooperating with the state of Arizona in any  
14 related investigation or any other matters arising from the activities described in this Order.

15           13. PACHECO and Respondent Spouse acknowledge that any restitution or penalties  
16 imposed by this Order are obligations of PACHECO as well as the marital community.

17           14. Respondents, FAC, and Respondent Spouse consent to the entry of this Order and  
18 agree to be fully bound by its terms and conditions.

19           15. Respondents, FAC, and Respondent Spouse acknowledge and understand that, if  
20 they fail to comply with the provisions of the order and this consent, the Commission may bring  
21 further legal proceedings against them, including application to the superior court for an order of  
22 contempt.

23           16. Respondents, FAC, and Respondent Spouse understand that default shall render  
24 them liable to the Commission for its costs of collection and interest at the maximum legal rate.

25           17. Respondents, FAC, and Respondent Spouse agree and understand that, if they fail  
26 to make any payment as required in the Order, any outstanding balance shall be in default and shall

1 be immediately due and payable without notice or demand. Respondents, FAC, and Respondent  
2 Spouse agree and understand that acceptance of any partial or late payment by the Commission is  
3 not a waiver of default by Commission.

4 18. PACHECO represents that he is the CEO of FAC; that FAC is both the managing  
5 member TFAG and the manager of AAMC, the general partner of AAF; and that he has been  
6 authorized by FAC, TFAG, and AAF to enter into this Order for and on behalf of them.

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JOHN W. PACHECO

STATE OF ARIZONA )  
County of Maricopa ) ss

SUBSCRIBED AND SWORN TO BEFORE me this 18 day of February, 2010.

JAMIE JACOBS  
NOTARY PUBLIC

My commission expires:

6/9/2013



Mary Angela Pacheco  
ANGELA PACHECO

STATE OF ARIZONA     )  
                                      ) ss  
County of Maricopa     )

SUBSCRIBED AND SWORN TO BEFORE me this 18 day of February, 2010.

Jamie Jacobs  
NOTARY PUBLIC

My commission expires:

6/9/2013



[Signature] CEO  
FINANCIAL AMERICAN CORPORATION

By: John W. Pacheco  
Its: CEO

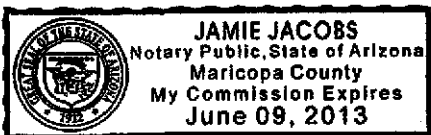
STATE OF ARIZONA     )  
                                      ) ss  
County of Maricopa     )

SUBSCRIBED AND SWORN TO BEFORE me this 18 day of February, 2010.

Jamie Jacobs  
NOTARY PUBLIC

My commission expires:

6/9/2013



THE FINANCIAL AMERICAN GROUP, LLC

By: Financial American Corporation

Its: Managing Member

By: John W. Pacheco

Its: CEO

STATE OF ARIZONA )

) ss

County of Maricopa )

SUBSCRIBED AND SWORN TO BEFORE me this 18 day of February, 2010.

Jamie Jacobs  
NOTARY PUBLIC

My commission expires:

6/9/2013



JAMIE JACOBS  
Notary Public, State of Arizona  
Maricopa County  
My Commission Expires  
June 09, 2013

AMERICAN APARTMENT FUND XI, LP

By: American Apartment Management Company, LLC

Its: General Partner

By: Financial American Corporation

Its: Manager

By: John W. Pacheco

Its: CEO

STATE OF ARIZONA )

) ss

County of Maricopa )

SUBSCRIBED AND SWORN TO BEFORE me this 18 day of February, 2010.

Jamie Jacobs  
NOTARY PUBLIC

My commission expires:

6/9/2013



JAMIE JACOBS  
Notary Public, State of Arizona  
Maricopa County  
My Commission Expires  
June 09, 2013

SERVICE LIST FOR: In the Matter of John W. Pacheco, et al.

John W. Pacheco  
Angela Pacheco  
Financial American Corporation  
The Financial American Group, LLC  
American Apartment Fund XI, LP  
c/o Brian J. Schulman, Esq.  
Greenberg Traurig, LLP  
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